

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A No. 176 of 2006

Applicants : Ghulam Shabir and others through
Mr. Zafar Ali Vighio, Advocate who is called absent today.

Mr. Riazuddin Qureshi, Advocate for respondents

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of hearing and Order : 15.08.2022

ORDER

ADNAN-UL-KARIM MEMON, J:- Through instant revision application, the applicants have called in question the judgment dated 16.05.2006 passed by learned 1st Addl. District Judge, Nawabshah in Civil Appeal No. 36 of 2005, whereby the learned Judge while allowing the appeal set aside the Judgment dated 16.4.2005 and decree dated 23.4.2005 passed by trial Court in F.C Suit No. 124 of 1999. The applicant has now attempted to re-open the case through this revision application under Section 115 CPC, inter-alia on the ground that the impugned judgment and decree passed by the learned appellate court is illegal, void, malafide, and liable to be set aside, whereas the judgment and decree passed by the learned trial court is legal, valid, proper, lawful and under the law and is liable to be maintained. That the learned appellate court failed to consider this material aspect of the case that in the year 1971 the residents/ occupants of the adjoining houses/ plots moved applications to the Defunct Deputy Commissioner, Nawabshah for allotment of the plots in their possession. Later on, the said plots/ houses were allotted to the occupants and necessary documents of the title were also issued in their names. On getting allotment of the plot in their possession the occupants of plots so also applicants stopped paying rent to the Evacuee Department. Accordingly the Defunct Deputy Commissioner, Nawabshah also allotted the plot in possession of the father and predecessor in interest of applicants in the name of their father and necessary title documents were also issued by the concerned authorities in the name of the father of the applicants and since then the applicants own the said plot as owners. Hence the impugned judgment and decree of the learned appellate court are liable to be set aside. That the learned appellate court also failed to consider this material aspect of the case that the applicants had made huge investment on the said plot and got constructed a pacca house and are putting on in the said plot/ house since 1962, without any hindrance or disturbance. Hence the impugned judgment and decree of the learned appellate court are liable to be set aside.

2. None present for the applicants and no intimation is received. The record reflects that since the year 2018 neither the applicants nor counsel turned up which shows that perhaps they have lost interest in these proceedings, therefore, I have gone through the record as available before me and find that there are findings of the appellate court available against the applicant which does not require further interference by this Court. An excerpt of the appellate judgment is reproduced as under:-

“Issue No.8

In view of my findings on issues No. 1 to 6 above, I have come to the conclusion that suit of plaintiffs is not maintainable neither the Civil Court has jurisdiction to declare any property as evacuee trust property u/s 8 of Evacuee Trust Properties (Management & Disposal) Act 1975, nor Civil Court can issue any injunction u/s 14 of the Act as such this issue is erroneously decided by the trial court.

In view of findings on the issues No. 1 to 8 above I am of the considered opinion that Judgment dated 16.4.2005 and Decree dated 23.4.2005 are passed by the court on the basis of misreading and non-reading of evidence and cannot be sustained in this appeal. I, therefore, answer point No.1 in affirmative that Judgment dated 16.4.2005 and Decree dated 23.4.2005 calls for interference in this appeal.

Point No.2

In view of my findings on Point No.1 above, I have come to the conclusion that learned trial court has erroneously decreed the suit without any jurisdiction. I, therefore, allow this appeal, set aside the Judgment dated 16.4.2005 and Decree dated 23.4.2005 and dismiss the suit of the plaintiffs accordingly. However, there is no order as to costs.

3. Primarily, cases can be revised by this Court as it possesses revisional jurisdiction as defined under Section 115 of the Code of Civil Procedure. This Court has the right to revise cases decided by subordinate courts to ensure the delivery of justice and maintenance of fairness. In the present case at revisional stage, the applicants have agitated the grounds already exhausted by them and properly adjudicated by the competent forum, thus in my view, no perversity and illegalities have been pointed out in the findings of the competent appellate forum, therefore no ground existed for re-evaluation of evidence, and thus, I maintain the Judgment and Decree passed by the appellate court.

4. Before parting with this order, it is observed that undoubtedly, Revision is a matter between higher and subordinate Courts, and the right to move an application in this respect by the Applicant is merely a privilege. The provisions of Section 115, C.P.C., have been divided into two parts; the first part enumerates the conditions, under which, the Court can interfere and the second part specifies the type of orders which are susceptible to Revision. In numerous judgments, the Honorable Supreme Court was pleased to hold that the jurisdiction under Section 115 C.P.C. is discretionary.

5. In the light of the above facts and circumstances of the case, I am of the view that this Court in its Revisional Jurisdiction cannot interfere in the findings recorded by the competent appellate court and I also do not see any illegality, infirmity, or material irregularity in the Judgment of appellate court warranting interference of this Court. Hence, this Revision Application is found to be meritless and is accordingly dismissed along with the pending application(s) with no order as to costs.

Karar_Hussain /PS

JUDGE